

# ELLIS:LAWHORNE

John J. Pringle, Jr.  
Direct dial: 803/343-1270  
[jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)

September 27, 2007

**FILED ELECTRONICALLY AND ORIGINAL VIA 1<sup>st</sup> CLASS MAIL**

The Honorable Charles L.A. Terreni  
Chief Clerk  
**South Carolina Public Service Commission**  
Post Office Drawer 11649  
Columbia, South Carolina 29211

RE: Application of Total Environmental Solutions, Inc. for Approval of  
Customer Agreement and Related Responsibilities, Rates and Charges  
**Docket No. 2007 \_\_\_\_\_ -W/S, Our File No. 557-11368**

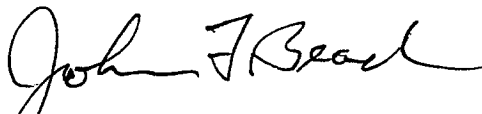
Dear Mr. Terreni:

Enclosed is the original and one copy of the one copy of the **Application** filed on  
behalf of Total Environmental Solutions, Inc. ("TESI") in the above-referenced matter.

Please acknowledge your receipt of this document by file-stamping the copy of  
this letter enclosed, and returning it in the enclosed envelope.

If you have any questions or need additional information, please do not hesitate to  
contact me.

Very truly yours,



John F. Beach

JFB/cr

cc: Office of Regulatory Staff Legal Department  
Mr. Robert Lee Proctor  
Julie McIntyre, Esquire

Enclosures

**THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED  
TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING  
INSTRUCTIONS.**

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Total Environmental Solutions, Inc.  
for Approval of Customer Agreement and Related  
Responsibilities, Rates and Charges

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 2007 - - W/S

(Please type or print)

Submitted by: John F. Beach

SC Bar Number: 595

Telephone: 803-343-1269

Fax: 803-799-8479

Address: Ellis, Lawhorne & Sims, PA

PO Box 2285

Columbia SC 29202

Other:

Email: jbeach@ellislawhorne.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda  
expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input checked="" type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

Print Form

Reset Form

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**

**DOCKET NO. 2007-\_\_\_-C**

IN RE:

Application of Total Environmental  
Solutions, Inc. for Approval of Customer  
Agreement and Related Responsibilities,  
Rates and Charges

**APPLICATION**

Total Environmental Solutions, Inc. ("Applicant," "Utility," or "TESI") hereby submits a Customer Agreement between it and certain of its Customers for consideration and approval by this Honorable Commission pursuant to Vol. 26 S.C. Code Ann. Regs. R. 103-541 (Supp. 2006) and otherwise. In support of this Application, Applicant respectfully shows as follows:

1. Applicant is a public utility currently authorized to provide water and wastewater services in Oconee County South Carolina under the jurisdiction of the Public Service Commission of South Carolina ("Commission"). The Commission has previously approved a schedule of Applicant's current rates and charges for water and wastewater service in Docket No. 2004-90-W/S by way of Order No. 2006-292(A) dated May 6, 2006.

2. Through this Application, TESI seeks approval of the arrangements set forth in the September 12, 2007 Consent Agreement between the South Carolina Department of Health and Environmental Control ("DHEC") and TESI related to the repair and maintenance of grinder pumps in Foxwood Hills (the "Consent Agreement" - attached as Exhibit A), along with the Agreement Between Total Environmental Solutions, Inc. and Property Owner/Customer

("Customer Agreement") attached to that Consent Agreement as Attachment A. The circumstances resulting in the need for this Application are more fully set forth in the Consent Agreement and as follows:

3. TESI owns and is responsible for the proper operation and maintenance of the Foxwood Subdivision wastewater collection system ("Foxwood WWCS"). DHEC regulates the construction, operation and maintenance of wastewater collection systems in South Carolina.

4. Since approximately 1977, the residents of Foxwood Hills Subdivision in Oconee County have received sewer service from Foxwood WWCS. The Foxwood WWCS consists of gravity sewer lines, low pressure force mains, and a number of lift stations. TESI currently serves approximately 546 sewer customers in Foxwood Hills.

5. Portions of the WWCS are designed so that certain customers connect to the WWCS at "low pressure" lines buried under or near streets within Foxwood Hills. Approximately 259 of such customers have "grinder pump stations" located on their property, in-line between the customer's home and the Applicant's low pressure lines.

6. The original developer of the Foxwood Hills Subdivision constructed the Foxwood Hills WWCS under the name Mountain Bay Utility Company, Inc. ("MBUC") and operated the Foxwood WWCS pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit SC0022357.

7. On or about December 23, 2000, TESI purchased the Foxwood WWCS from MBUC's parent company, Johnson Properties, through an involuntary Chapter 11 Bankruptcy sale in the United States Bankruptcy Court for the Middle District of Louisiana ("Bankruptcy Court"). TESI's purchase of certain MBUC assets was part of a larger purchase of other Johnson

Properties-related assets encompassing 248 water and sewer facilities in six (6) states.

8. This Commission approved TESI's purchase of the MBUC assets and transferred MBUC's Certificate of Public Convenience and Necessity to TESI in Docket No. 2000-441-W/S, through Order No. 2000-824 dated October 10, 2000.

9. TESI received certain asset schedules as part of its bankruptcy purchase. Certain purchased facilities in other states specifically listed grinder pumps as part of their assets. There was, however, no evidence in the asset schedules or in any of the other MBUC records that MBUC ever owned any grinder pumps within Foxwood Hills, including at the time of the bankruptcy purchase. Consequently, TESI is informed and believes that it does not own any of the grinder pumps within Foxwood Hills, and that all of those grinder pumps are owned by the customers and/or homeowners on whose land the grinder pumps are situated.

10. On February 21, 2001, DHEC approved the NPDES Permit transfer from MBUC to TESI and modified NPDES Permit SC0022357 to reflect TESI as the new permittee.

11. Since TESI began to provide water and sewer service at Foxwood Hills, it has operated the Foxwood WWCS pursuant to the structure that all grinder pumps were owned by the property owners/customers, and that repair and maintenance of the grinder pumps were the customers', and not TESI's, obligation. TESI still believes that this is the correct legal expression of the respective ownership and regulatory obligations related to these grinder pumps.

12. Around April 10, 2006, DHEC staff informed TESI of a Foxwood customer complaint related to the operation, repair and maintenance of that customer's grinder pump. TESI informed DHEC that the customer owned this grinder pump, and was responsible for the

repair and maintenance thereof. While expressly preserving this position, TESI replaced the customer's grinder pump in an effort to assist DHEC with this problem, and the customer reimbursed TESI for the related cost.

13. This occurrence led to a series of negotiations between TESI and DHEC staff toward establishing who had the regulatory responsibility for repair and maintenance of these grinder pumps. The negotiations were initially unsuccessful. When TESI and DHEC staff could not reach an agreement regarding repair and maintenance of grinder pumps in Foxwood Hills, DHEC staff issued Administrative Order No. 07-123-W ("Administrative Order") on or about February 27, 2007.

14. TESI appealed the Administrative Order's underlying conclusion that TESI owned and was responsible for the repair and maintenance of grinder pumps in Foxwood Hills, and requested a Final Review Conference before the Board of Health and Environmental Control ("DHEC Board") on that issue. After hearing the positions of TESI and DHEC staff, on May 24, 2007 the DHEC Board issued its Final Agency Decision (the "DHEC Board Order") vacating Administrative Order No. 07-023-W and remanding the matter to DHEC staff with instructions for the Parties to attempt to enter into an agreement through which Foxwood grinder pumps would be repaired and maintained going forward.

15. DHEC and TESI negotiated pursuant to the DHEC Board Order and, on September 12, 2007, came to an agreement that is embodied in the Consent Agreement attached hereto as Exhibit A. In this Consent Agreement, DHEC and TESI lay out a detailed plan through which TESI will ultimately undertake the regulatory responsibility for the repair and maintenance of certain current and future grinder pumps located on customer properties in

Foxwood Hills.

16. The centerpiece of this detailed plan is the Customer Agreement. TESI and DHEC agree that the Customer Agreement will adequately address TESI's need for access to grinder pumps on the customers' premises for inspection, maintenance, repair and replacement, and also clearly set forth the respective customer and utility responsibilities for the grinder pumps.

17. Pursuant to provisions in the Consent Agreement, TESI is submitting the Customer Agreement, including the related arrangements through which TESI will undertake and fund the repair and maintenance of these grinder pumps going forward, to the Commission for approval.

18. If the Commission approves this Application and the related Customer Agreement, TESI and DHEC will, within forty five (45) days, meet with the homeowners in Foxwood Hills served by applicable residential grinder pumps and explain the terms of such Customer Agreement (the "Approved Customer Agreement"), along with the related ownership requirements, financial responsibilities, and procedures for notification of any malfunctions.

19. Following that meeting with the affected customers, TESI will exercise due diligence to obtain a signed Approved Customer Agreement from every customer at Foxwood Hills served by an applicable residential grinder pump. If TESI is unable to obtain a signed Approved Customer Agreement with any such customer, TESI will promptly contact DHEC's Region I-Anderson Office for assistance. With regard to new customers, TESI will provide the Approved Customer Agreement to each prospective new customer to be served by an applicable residential grinder pump as part of the new customer's application process. TESI will exercise

due diligence to obtain a signed Approved Customer Agreement from each applicable new customer. If TESI is unable to obtain a signed Approved Customer Agreement with any such customer, TESI will promptly contact DHEC's Region I-Anderson Office for assistance. TESI will secure customer signatures on all Approved Customer Agreements that it can within ninety (90) days of the PSC's final approval of the Customer Agreement. TESI will provide DHEC with a list of any customers who refused to sign an Approved Customer Agreement and the apparent reasons for such refusal.

20. At the end of this ninety (90) day period, TESI and DHEC have agreed that TESI will then be responsible to repair and maintain all current and future grinder pumps for which TESI has been able to obtain a signed Customer Agreement, except those specifically identified in the following three numbered paragraphs. In the event TESI is unable, after its best efforts, to obtain fully executed Customer Agreements from particular customers, TESI and DHEC have agreed that TESI will then be responsible only to oversee such customers' repair, maintenance and/or replacement of the grinder pumps.

21. In the Consent Agreement, TESI and DHEC expressly recognize that certain grinder pumps located on customer properties within Foxwood Hills are not governed by the Consent Agreement and are, therefore, not a subject of this Application.

22. First, certain grinder pumps are connected to the Foxwood WWCS gravity lines, rather than TESI's low pressure lines. DHEC has taken the position that such grinder pumps are the property owner's, and not the utility's, responsibility. Consequently, DHEC and TESI have agreed that such grinder pumps within Foxwood Hills will continue to be the sole responsibility of the respective customers that they serve, and not of TESI. TESI will not seek Customer



Agreements with these customers.

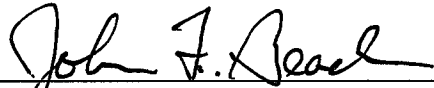
23. Second, Kinston Manor and Villas of Foxwood condominiums, located within the Foxwood Hills subdivision, are served by twenty five (25) grinder pumps located on those property owners' property and connected to the Foxwood WWCS at TESI's low pressure lines. DHEC and TESI agree that the Kinston Manor Association and Villas of Foxwood Hills Association own these grinder pumps, and have the sole regulatory obligation to operate, repair, and maintain them. See *DHEC Consent Order No. 02-191-W between SC Department of Health and Environmental Control, Kinston Manor Association and Villas of Foxwood Hills Association*. TESI will not seek Customer Agreements with these customers.

24. Applicant is informed and believes that the public convenience and necessity will be served by the approval of this Application. Such approval will provide regulatory certainty with regard to the responsibility for repair and maintenance of grinder pumps within Foxwood Hills. Such approval will also serve to satisfy DHEC's regulatory goals as expressed in the Consent Agreement. Finally, approval will provide Applicant and its customers with a sustainable and fair method of addressing the costs associated with grinder pump repair and maintenance. Applicant is informed and believes that this matter meets the requirements of S.C. Code Ann. § 58-5-240(G) (Supp. 2006) and that, therefore, no hearing in this matter is required.

WHEREFORE, having fully set forth its Application, Applicant prays that the Commission:

- a. approve the Application and attached Customer Agreement;
- b. allow the Applicant to seek execution of the Customer Agreement with Applicant's customers, as set forth herein;

- c. allow the Applicant to address the repair, maintenance and replacement of applicable grinder pumps within Foxwood Hills as set forth herein, in the Consent Agreement, and the Customer Agreement;
- d. approve the amendment of Applicant's tariff, as necessary, to reflect such arrangements,
- e. either waive a hearing on the within matter or expedite review of the within Application; and
- f. grant Applicant such other and further relief as the Commission may deem just and proper.



John F. Beach  
Jessica J. O. King  
**Ellis Lawhorne & Sims, P.A.**  
1501 Main Street, 5<sup>th</sup> Floor  
P.O. Box 2285  
Columbia, South Carolina 29202  
Telephone: (803) 779-0066  
Facsimile: (803) 799-8479  
[jbeach@ellislawhorne.com](mailto:jbeach@ellislawhorne.com)  
Attorneys for Total Environmental Solutions,  
Inc.

Columbia, South Carolina  
September 27, 2007

**THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

---

**IN RE: TOTAL ENVIRONMENTAL SOLUTIONS, INC.  
OCONEE COUNTY**

---

**CONSENT AGREEMENT  
07-159-W**

---

Total Environmental Solutions, Inc. (the Respondent) owns and is responsible for the proper operation and maintenance of the Foxwood Subdivision wastewater collection system (Foxwood WWCS). The South Carolina Department of Health and Environmental Control (the Department) regulates the construction, operation and maintenance of wastewater collection systems in South Carolina.

The Department and the Respondent (collectively, the "Parties") concur that in the interest of resolving this matter without delay and expense of litigation, Respondent agrees to the entry of this Consent Agreement (Agreement), but the Respondent neither agrees with nor admits the Findings of Fact or the Conclusions of Law; and therefore, agrees that this Agreement shall be deemed an admission of fact and law only as necessary for enforcement of this Agreement by the Department.

**FINDINGS OF FACT**

1. Since approximately 1977, the residents of Foxwood Hills Subdivision in Oconee County have received sewer service from Foxwood WWCS. The Foxwood WWCS consists of gravity sewer lines, low pressure force mains, and a number of lift stations. Due to the topography in the area, there are now approximately 259 grinder pump stations located on individual residents'

property that are connected to the low pressure portion of the Foxwood Hills WWCS.

2. The original developer of the Foxwood Hills Subdivision constructed the Foxwood Hills WWCS under the name Mountain Bay Utility Company, Inc. (MBUC) and operated the Foxwood WWCS pursuant to National Pollutant Discharge Elimination System (NPDES) Permit SC0022357.

3. On or about December 23, 2000, the Respondent purchased the WWCS from MBUC's parent company, Johnson Properties, through an involuntary Chapter 11 Bankruptcy sale in the United States Bankruptcy Court for the Middle District of Louisiana (Court). The Respondent avers that it received no documentation, and there is no evidence, that MBUC owned any grinder pumps within Foxwood Hills at the time of the bankruptcy purchase and related transfer of assets.

4. On February 21, 2001, the Department approved the NPDES Permit transfer and modified NPDES Permit SC0022357 to reflect the Respondent as the new permittee.

5. On April 6, 2006, Department staff received a citizen's complaint asserting that sewage was backing up into the grinder pump holding tank of the residence located at 1042 Trailwinds Drive, which is in the Foxwood Hills Subdivision.

6. On April 10, 2006, Department staff met with agents for the Respondent at the complainant's address to discuss the complaint.

7. On May 24, 2006, Department staff received another citizen's complaint asserting that sewage was backing up into the grinder pump holding tank at 1042 Trailwinds Drive.

8. On May 15, 2006 and August 15, 2006, Department staff met with agents of the Respondent to discuss the situation at 1042 Trailwinds Drive and responsibility for the proper operation and maintenance of the individual grinder pumps located on customer properties

within the Foxwood Hills Subdivision.

9. An Agreement could not be reached between the Department staff and the Respondent regarding operation and maintenance responsibilities of the subject grinder pumps. As a result, the Department issued Administrative Order No. 07-023-W, which was received by the Respondent on February 27, 2007.

10. On March 7, 2007, the Respondent requested a Final Review Conference before the Board of Health and Environmental Control pursuant to S.C. Code Ann. § 44-1-60 (Supp. 2006).

11. On March 21, 2007, the Board agreed to hold a Final Review Conference on this matter.

12. On April 12, 2007, the Board held a Final Review Conference at which the Department Staff and the Respondent presented their respective positions.

13. On or about May 24, 2007, the Board issued its Final Agency Decision vacating Administrative Order No. 07-023-W and remanding this matter to the Department Staff with instructions for the Parties to attempt to enter into an agreement containing certain provisions.

14. The Parties enter into this Consent Agreement in accordance with the Board's Final Agency Decision.

15. Notwithstanding the non-admission language in the second paragraph of this Agreement, after obtaining fully executed contracts from each applicable customer to the extent possible after all due diligence, Respondent will agree that it will then be responsible for the repair and maintenance of certain current and future grinder pumps located on customer properties within Foxwood Hills subdivision service area and connecting to Foxwood WWCS low pressure lines, except for those grinder pumps that are owned and operated by another managing company specifically approved by the Department, including but not limited to grinder pumps located in Kinston Manor and the Villas at Foxwood Hills, and those grinder pumps where the Respondent

is unable, after its best efforts, to obtain fully executed Customer Agreements. However, in the event Respondent is unable, after its best efforts, to obtain fully executed Customer Agreements from particular customers, Respondent will be responsible to oversee any repair, maintenance and/or replacement of the grinder pumps for which it does not have fully executed Customer Agreements.

16. The Parties recognize that certain grinder pumps located on customer properties connect to Foxwood WWCS gravity lines. These grinder pumps will continue to be the sole responsibility of the respective customers that they serve. Notwithstanding any other language in this Agreement, none of the provisions or requirements set forth herein shall apply to grinder pumps located on customer properties and connecting to Foxwood WWCS gravity lines.

17. The Parties recognize that Kinston Manor and Villas of Foxwood condominiums, located within the Foxwood Hills subdivision, are served by twenty five (25) grinder pumps that connect to a low pressure portion of Respondent's Foxwood WWCS. The Kinston Manor Association and Villas of Foxwood Hills Association own these grinder pumps and have the regulatory obligation to operate, repair, and maintain them. *Consent Order No. 02-191-W between SC Department of Health and Environmental Control, Kinston Manor Association and Villas of Foxwood Hills Association.* Notwithstanding any other language in this Agreement, none of the provisions or requirements set forth herein shall apply to the grinder pumps serving these condominiums.

**NOW, THEREFORE, IT IS ORDERED, CONSENTED TO AND AGREED,** pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-50 (1987) and S.C. Code Ann. § 48-1-100 (Supp. 2006), as follows:

1. Department and Respondent agree that the Agreement Between Total Environmental

Solutions, Inc. and Property Owner/Customer ("Customer Agreement"), (*Attachment A*, incorporated herein by this reference) will adequately address Respondent's access to grinder pumps on the customers' premises for inspection, maintenance, repair, and replacement, and, as approved by the South Carolina Public Service Commission (PSC), the respective customer and utility responsibilities for the grinder pumps. Respondent and the Department agree that the Customer Agreement satisfies the Respondent's regulatory responsibility to ensure that the Respondent's repair and maintenance of the subject grinder pumps will take place.

2. The Department and the Respondent recognize that all contracts between the Respondent utility and its customers, including the Customer Agreement, must be approved by the PSC. S.C. Regs. 103-541 (1976, as amended). Within fifteen (15) days of the date of execution of this Agreement, Respondent will petition the PSC for approval of the Customer Agreement and related responsibilities, rates, and charges. The Department will provide Respondent such documentation, assistance and testimony as may be reasonably necessary to support approval of the Customer Agreement and related responsibilities. In the event that the PSC issues an order denying approval of the Customer Agreement, the parties agree to meet shortly thereafter to attempt to negotiate an alternate solution and time schedule that will ensure that before the Respondent takes responsibility for the repair, maintenance and replacement of the applicable grinder pumps, it has an approved means of access and compensation. At the completion of such negotiations, this Consent Agreement will be amended to reflect the terms agreed upon by the parties.

3. In the event the PSC approves a Customer Agreement in response to Respondent's petition, within forty five (45) days of the PSC's final approval, Respondent and the Department will meet with the homeowners served by applicable residential grinder pumps in order for

Respondent to explain the terms of the Customer Agreement approved by the PSC (Approved Customer Agreement), as well as the procedures for notification of any malfunctions, ownership requirements, and financial responsibilities. After holding this meeting, the Respondent will exercise due diligence to obtain a signed Approved Customer Agreement with every customer at Foxwood Hills served by an applicable residential grinder pump. If the Respondent is unable to obtain a signed Approved Customer Agreement with any such customer, the Respondent will promptly contact the Department's Region I-Anderson Office for assistance. With regard to new customers, Respondent will provide the Approved Customer Agreement to each prospective new customer to be served by an applicable residential grinder pump as part of the new customer's application process. Respondent will exercise due diligence to obtain a signed Approved Customer Agreement from each applicable new customer. If the Respondent is unable to obtain a signed Approved Customer Agreement with any such customer, the Respondent will promptly contact the Department's Region I-Anderson Office for assistance. The Respondent will obtain all signed Approved Customer Agreements that it can obtain within ninety (90) days of the PSC's final approval of the Customer Agreement. The Respondent will provide the Department with a list of any customers who refused to sign an Approved Customer Agreement and the apparent reasons for such refusal.

4. Within ninety (90) days of the effective date of this Order, Respondent will submit to the Department an amendment to Respondent's existing capacity, Management, Operation and Maintenance (cMOM) audit. This amendment will be a comprehensive management plan for Respondent's repair and maintenance of applicable grinder pumps within Foxwood Hills. The amendment shall include the following components: 1) an operation and maintenance plan for all current and future applicable residential grinder pumps, 2) a financial plan detailing how repair



and maintenance of the applicable grinder pumps will be funded, 3) applicable grinder pump use and grease ordinance, 4) a spare parts inventory related to applicable grinder pump repair and maintenance, and 5) any other components necessary for proper repair and maintenance of applicable grinder pumps. The cMOM amendment must include a schedule of implementation, not to exceed three (3) years from the date of execution of this Agreement, which upon approval by the Department shall be incorporated into and become an enforceable part of this Agreement.

5. If Respondent requests documents from the Department relating to this matter, staff shall provide all responsive and available documents within a reasonable time period.

6. The Department shall provide reasonable assistance to Respondent for public meetings relating to this Consent Agreement and the Public Service Commission proceeding for approval of the Customer Agreement.

7. During the pendency of the Respondent's action before the PSC, the Respondent shall take responsibility for repair and maintenance of grinder pumps, subject to gaining access to the customer's property and working out payment arrangements for the grinder pump if it must be replaced. In the event a customer will not allow access, the Respondent will contact the Department's Region I-Anderson Office for assistance. If a customer will not grant Respondent access and/or will not agree to pay for a new grinder pump, customer will be notified that he or she will be held solely responsible for replacement of the grinder pump, with the necessary oversight provided by Respondent. Respondent will notify the Department of the customer's name, address, and location within Foxwood Hills.

**THE PARTIES AGREE** that if any event occurs which causes or may cause a delay in meeting any of the above scheduled dates for completion of any specified activity, Respondent shall notify the Department in writing at least one (1) week before the scheduled date, describing in

detail the anticipated length of the delay, the precise cause or causes of delay, if ascertainable, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented.

The Department shall provide written notice as soon as practicable that a specified extension of time has been granted or that no extension has been granted. An extension shall be granted for any scheduled activity delayed by an event of *force majeure*, which shall mean the event arising from causes beyond the control of the Respondent that causes a delay in or prevents the performance of any conditions of any of the conditions under this Consent Agreement including but not limited to: a) acts of God, fire, war, insurrection, civil disturbance, explosion; b) adverse weather condition that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; c) restraint by court order of public authority; d) inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to actions or inactions of any governmental agency or authority; and e) delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence by the Respondent.

Events which are not *force majeure* include by example, but are not limited to, unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or any person's failure to exercise due diligence in obtaining governmental permits or fulfilling contractual duties. Such determination, after notice, will be made in the sole discretion of the Department. Any extensions shall be incorporated by reference as an enforceable part of this Consent Agreement and thereafter be referred to as an attachment to the Consent Agreement.

**PURSUANT TO THIS AGREEMENT**, all communication regarding this Agreement and its requirements, shall include the Agreement number and shall be addressed as follows

To the Department:

Robert L. "Lee" Proctor  
Water Enforcement Division  
Bureau of Water  
SCDHEC  
2600 Bull Street  
Columbia, S.C. 29201

To the Respondent:

Bill Schoening, CEO  
Total Environmental Solutions, Inc.  
PO Box 14056  
Baton Rouge LA 70898-4056

and,

John F. Beach  
Ellis Lawhorne & Sims, P.A.  
P.O. Box 2285  
Columbia, SC 29202

Except where documents are submitted to meet a requirement, the Respondent shall confirm, in writing, completion of Agreement requirements to the above address within ten (10) days of completion. The Respondent shall include the Consent Agreement number listed above on all submittals required under this Agreement.

**IT IS FURTHER AGREED** the pursuant to the Board's Final Agency Decision in this matter, this Agreement shall remain in effect until Respondent has obtained or had the opportunity to obtain a Customer Agreement with each affected homeowner relating to the grinder pumps, which in no event shall be later than one year following Public Service Commission approval of the Customer Agreement.

**IT IS FURTHER AGREED** that while this Consent Agreement remains in effect, the

Department will not seek enforcement action against Respondent for overflows from or similar malfunctions of the WWCS in Foxwood that are related to problems with an individual grinder pump, so long as Respondent takes all reasonable and timely steps to remedy the problem in cooperation with the homeowner.

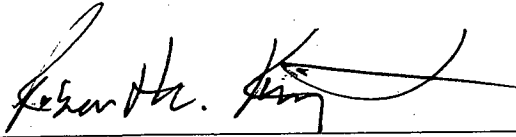
**IT IS FURTHER AGREED**, pursuant to the Board's Order, at the expiration of this Consent Agreement, Respondent will continue to maintain the applicable grinder pumps for which it has current Customer Agreements within Foxwood Hills Subdivision pursuant to the terms of the Customer Agreement and Respondent's amended cMOM. In the event that an existing or new customer declines to be bound by the terms of the Customer Agreement, that customer, and not the Respondent, shall be solely responsible for the repair and maintenance of that customer's grinder pump, with the necessary oversight provided by Respondent. In such event, Respondent shall immediately notify the Department of the customer's name, address and location within Foxwood Hills.

**IT IS FURTHER AGREED** that failure to comply with any provision of this Agreement shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330 (1987), to include the assessment of civil penalties.

**IT IS FURTHER AGREED** that this Consent Agreement governs only TESI's alleged liability to the Department for civil sanctions arising from the matters set forth herein and constitutes the entire agreement between the Department and TESI with respect to the resolution and settlement of the matters set forth herein. The parties are not relying upon any representations, promises, understandings or agreements except as expressly set forth within this Agreement.

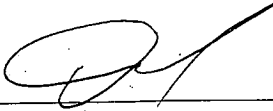
**[Signature Page Follows]**

FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL



Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

Date: 9/12/07



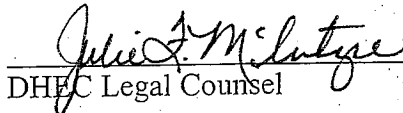
David E. Wilson  
Bureau Chief  
Bureau of Water

Date: 9-12-07



Glenn Trofater, P.E., Director  
Water Enforcement Division  
Bureau of Water

Date: 9/12/07

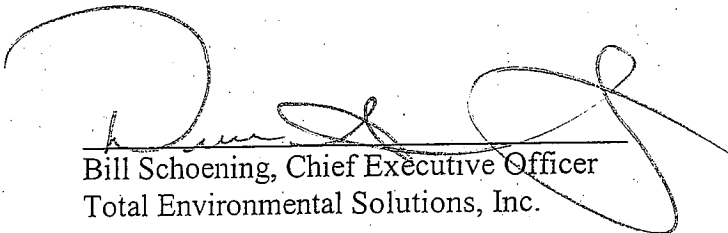


DHEC Legal Counsel

Date: Sept. 12, 2007

WE CONSENT:

TOTAL ENVIRONMENTAL SOLUTIONS, INC/  
FOXWOOD HILLS SUBDIVISION WASTEWATER COLLECTION SYSTEM



Bill Schoening, Chief Executive Officer  
Total Environmental Solutions, Inc.

Date: 9-11-07

# **ATTACHMENT A**

**AGREEMENT BETWEEN  
TOTAL ENVIRONMENTAL SOLUTIONS, INC.  
AND PROPERTY OWNER/CUSTOMER**

This Agreement is hereby entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ between \_\_\_\_\_ ("Customer"), the record owner of Lot # \_\_\_\_\_, Section \_\_\_\_\_ of Foxwood Hills Subdivision, Oconee County, South Carolina (the "Property"), and Total Environmental Solutions, Inc. ("TESI" or the "Utility"), a licensed utility company in the State of South Carolina. (Customer and TESI collectively referred to herein as the "Parties")

WHEREAS the Customer receives sewer service from TESI at the Property within Foxwood Hills; and

WHEREAS a grinder pump is located on the Property, and the Customer's home connects to the Foxwood wastewater collection system ("WWCS") at a low pressure line owned by TESI; and

WHEREAS the Parties wish to enter into this Agreement in order to establish TESI's right to access the Customer's Property to repair and maintain the grinder pump, and set forth the Parties' respective rights and obligations with regard to the operation, repair, and maintenance of the grinder pump;

THEREFORE, for good and valuable consideration, including the mutual promises set forth herein, TESI and the Customer agree as follows:

**EASEMENT AND RIGHT OF WAY**

1. Customer warrants that he or she is the utility customer and fee simple owner of record for the Property, and is legally authorized and entitled to enter into this



Agreement.

2. Customer hereby grants and conveys to the Utility an easement and right of way on, over and across the Property necessary for the Utility to repair and maintain the grinder pump, as set forth herein. This easement and right of way includes extending to the Utility, its agents, servants, and employees, the right to enter upon the Customer's Property at any and all times for the purpose of maintaining, repairing, and/or replacing the grinder pump station located thereon.

3. Customer agrees and warrants to immediately notify the Utility in writing in the event the Customer intends to sell or lease the Property and, in any event, Customer shall notify the Utility in writing at least ten (10) days prior to closing on said sale or entering into said lease, identifying the purchaser or lessee, including his or her full name, address, and telephone number. Customer also agrees to provide the purchaser and/or lessee with a copy of this Agreement at least ten (10) days prior to closing or entering into said lease.

#### CUSTOMER OBLIGATIONS

1. In the case of new construction that includes the installation of a grinder pump:
  - a. Customer will submit its plan for the grinder pump installation to the Utility for approval prior to installation;
  - b. Utility will specify the pump size and type necessary to adequately serve the Property;
  - c. Utility will specify the proper design and installation of the grinder pump, check valves, alarm or other warning device, electrical service, service

line, inspection ports, and other appurtenances necessary to adequately serve the Property (collectively, the "grinder pump system");

2. Customer shall provide adequate electrical power to the grinder pump at all times.
3. Customer shall assure the Utility all ingress and egress necessary for inspection and repair purposes.
4. Customer shall not introduce non-bio-degradable or harmful products, including those specified by the Utility, into Customer's sewer lines leading to the grinder pump.
5. Customer shall immediately notify the Utility in the event of a spill or other malfunction of the grinder pump.
6. Customer shall bear the cost of any repair or maintenance of the grinder pump, as more fully set forth below.

In the event that the Utility determines, in its sole discretion, that any portion of the Customer's grinder pump system is in need of repair, maintenance, and/or replacement, the Utility shall have such work performed by a third party contractor in a timely and workmanlike fashion. Upon completion of such work, the Utility shall present to the Customer an invoice for all costs, including parts and third party labor, expended in the performance of such work. The Customer agrees that he or she shall pay the Utility the amount set forth on the subject invoice within thirty (30) days of the date of the invoice.

In the event that Customer fails to perform any of its obligations under this Agreement, the Utility shall have the right to terminate Customer's water and sewer service to

the Property in accordance with the requirements and procedures established by the South Carolina Public Service Commission.

#### UTILITY OBLIGATIONS

1. In exchange for the right and obligations set forth herein, the Utility shall be directly responsible for the repair and maintenance of the subject grinder pump system.
2. Utility agrees to repair and maintain the grinder pump system and keep it in operation as follows:
  - a. Installation of individual pumps and associated appurtenances will be under the supervision of the Utility.
  - b. Effluent piping from grinder pump to collection tap will be under the supervision of the Utility.
  - c. The Utility shall maintain at Foxwood Hills a grinder pump inventory, currently approved model, of 2% of the total number of pumps subject to an Agreement between the customer and the Utility, but not in any event less than one (1).
  - d. Utility shall specify the currently approved model grinder pump, which the Customer may obtain from the Utility, the pump manufacturer, or any third party distributor approved for warranty purposes by the pump manufacturer.

This contract is subject to approval by the South Carolina Public Service Commission. The Customer agrees to provide reasonable support for any petition for

such approval that the Utility deems necessary to pursue. In the event that the Public Service Commission disapproves this Agreement, all of the obligations, rights and responsibilities set forth herein shall be null and void.

The Customer and the Utility shall be subject to all other rules, regulations, and tariff provisions otherwise applicable to Utility's provision of water and sewer service to the Customer. To the extent that any of the provisions set forth herein conflict with such other rules, regulations, and tariffs, the provisions of this Agreement shall govern.

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

\_\_\_\_\_  
PROPERTY OWNER

\_\_\_\_\_  
TOTAL ENVIRONMENTAL SOLUTIONS, INC.